Filed 3/29/13 Marriage of Noblejas CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re Marriage of PACIFICO N. and TERESITA A. NOBLEJAS.	B239294
PACIFICO N. NOBLEJAS, Respondent, v. TERESITA A. NOBLEJAS, Appellant.	(Los Angeles County Super. Ct. No. PD033728)

APPEAL from a judgment of the Superior Court of Los Angeles County. Patricia M. Ito, Judge. Affirmed.

Teresita A. Noblejas, in pro. per., for Appellant

Law Offices of David Ingram and David L. Ingram for Respondent.

Appellant Teresita A. Noblejas (wife) appeals from the December 16, 2011 judgment characterizing certain property as community property and dividing the community property between wife and respondent Pacifico Noblejas (husband). Wife contends: (1) property wife transferred to an LLC of which she was a shareholder was not community property; (2) other property wife gifted to her mother and which her mother sold was not community property; (3) still other property wife acquired during the marriage was not community property; (4) the findings regarding wife's income for purposes of calculating child support were not supported by substantial evidence; (5) the trial court erred in denying wife's motion for new trial; and (6) the trial court erred in denying her motion to modify child support. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Husband and wife were married on March 24, 1974. They had four children and separated in 2003. The marriage was dissolved effective November 26, 2007. The parties stipulated to joint legal and physical custody of the minor child and that certain real property located in the Philippines was husband's sole and separate property. Other issues, including whether certain real property was separate or community property, were tried over a number of days in April 2011, and on August 4, 2011. Wife represented herself at the trial; husband was represented by counsel. Without a reporter's transcript of the trial, we are not able to ascertain exactly what evidence was considered by the trial court. From the clerk's transcript and the augmented record, we glean that wife maintained that five parcels of real property acquired during the marriage were her separate property for the following reasons:

- Leadwell Street, Sun Valley: the property was purchased by husband and wife in 1981 for $80,000, including a $72,000 trust deed; in 1984, the property was sold to wife's brother Remigio Andres, Jr. (Remigio, Jr.) and Emelita de la Cruz (Emelita) so that husband and wife could qualify for a loan to purchase the Canby Street property in Northridge; Emelita quitclaimed her interest in the property to Remigio, Jr. and his wife; Remigio, Jr. and his wife later sold the

property to his and wife's mother Dolores Andres (Dolores) and father Remigio Andres (Remigio, Sr.) in 1989; Dolores and Remigio, Sr. quitclaimed the property to wife as her separate property in 2000; in 2008, wife quitclaimed the property to a self-named LLC; in 2009, that LLC transferred the property to The Asset Solutions, LLC (Asset), an LLC of which wife was one of several shareholders.

- Sundown Court, Dana Point: Dolores and Remigio, Sr. purchased the property in 1990 for $93,300; in 1991, they transferred the property to wife as her separate property; in 2002, wife transferred the property to herself and husband as joint tenants so that husband could cosign a loan collateralized by the property; at the time, wife did not intend to transmute the property into community property; the joint tenancy was severed by the divorce in 2007; in 2008, wife quitclaimed her interest in the property to her separate property and then to her self-named LLC; in 2009, that LLC transferred the property to Asset; as a result, the property was owned by Asset and husband as tenants in common.
- Canby Avenue, Northridge: In April 2008, husband quitclaimed his interest in the property to wife in exchange for which wife quitclaimed her interest in other Northridge property (Eames Avenue) to husband; wife quitclaimed the property to her self-named LLC; in 2009, that LLC transferred the property to Asset.
- Lucille Road, Murrieta: This vacant lot was purchased with community funds in July 1994; husband immediately quitclaimed his interest in the property to wife; in February 2004, wife quitclaimed the property to her mother, Dolores, who sold the property in May 2004 for $205,000.
- New Zealand, Lot 17: Wife acquired the property in 1999 using a $30,000 gift from Dolores.

The trial court was not convinced. In a minute order entered on October 31, 2011, the trial court found the real property acquired during the marriage raised a presumption that those properties were community property, and that husband's "purported signing of . . . deeds relinquishing an interest in the properties was not done knowingly and intelligently so as to rebut the presumption of undue influence." The court divided what it found were community assets as follows:

Awarded to Wife	
Gold and platinum coins:	$100,000
Husband's 401K:	$42,750 (50 percent of $85,500)
Wife's Pension:	$142,489 (100 percent)
Roscoe Blvd., Reseda:	$15,993 appraised value
Canby Ave., Northridge:	$276,000 value of equity
	$16,965 refinancing proceeds
Lucille Road, Murietta:	$220,000 sale proceeds
Leadwell St., Sun Valley:	$170,000 appraised value
Sundown Court, Dana Point:	$52,414.22 refinancing proceeds
Wife's use of Canby:	$25,960 (50 percent of $51,920)
Subtotal to wife:	**$1,062,571.22**
Equalizing Payment:	($148,286.11)
Total to wife	**$914,285.11**

Awarded to Husband	
Cash:	$10,000
Silver Coins:	$5,500
Husband's 401K:	$42,750 (50 percent of $85,500)
Eames Ave., Northridge:	$120,000 value of equity
New Zealand:	$85,289 appraised value
Sundown Court, Dana Point:	$476,500 value of equity

Wife's use of Canby:	$25,960 (50 percent of $51,920)
Equalizing Payment:	$148,286.11
Total to husband:	**$914,285.11**

Finding wife had made no effort to obtain employment, the trial court imputed monthly income of $10,000 to wife and ordered her to pay husband monthly child support of $145, retroactive to September 1, 2007. Judgment was entered on December 16, 2011. After her motion for new trial was denied, wife timely appealed.[1] She elected to not include the reporter's transcript of the trial in the appellate record.

DISCUSSION

A. Having Elected to Proceed Without a Reporter's Transcript, Wife Cannot Challenge the Sufficiency of the Evidence to Support the Finding That Real Property Held in the Name of Asset Was Community Property

Wife contends it was a denial of due process for the trial court to characterize as community property the Sun Valley, Dana Point and Northridge properties. As we understand her argument, it is that although these properties had at one time been community property, the evidence established that they had been transmuted into wife's separate property which wife later lawfully transferred to Asset. We find the contention without merit.

In a proceeding for dissolution of marriage, the court must divide the community estate of the parties equally. (Fam. Code, § 2550.) We review the trial court's finding

---

[1] In his respondent's brief, husband contends the appeal must be dismissed because the notice of appeal was filed 61 days after the notice of entry of judgment was served. (See Cal. Rules of Court, rule 8.104(a)(1)(A).) After husband's brief was filed, we denied husband's motion to dismiss the appeal as untimely. A valid notice of intention to move for new trial extends the normal time to file a notice of appeal to 30 days after an order denying the motion is served. (Rule 8.108(b)(1)(A).) Here, although the record does not include a copy of wife's notice of motion for new trial, the appellate record includes a January 27, 2012 minute order denying such a motion. Thus, wife's time to file a notice of appeal was extended to 30 days after January 27, 2012, and her notice of appeal filed on February 15, 2012, was timely.

that a particular item is separate or community property for substantial evidence. (*In re Marriage of Walker* (2012) 203 Cal.App.4th 137, 152.) Where the appellant elects to proceed without a reporter's transcript of the trial preceding the judgment, the sufficiency of the evidence is not open to review. (*Bond v. Pulsar Video Productions* (1996) 50 Cal.App.4th 918, 924; *National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 522 [no evidentiary basis for attacking trial court's rulings in absence of reporter's transcript or settled statement].)

Here, because wife elected to proceed without a reporter's transcript, her challenge to the sufficiency of the evidence to support the trial court's finding that the Sun Valley, Dana Point and Northridge properties were community property necessarily fails.

B. The Trial Court Had Jurisdiction Over the Murrieta Property

Wife contends the trial court did not have jurisdiction over the Murrieta property because it was owned by wife's mother, Dolores, and was therefore not community property. She argues that the evidence established that the property was transmuted from community property to wife's separate property by husband's execution of a quitclaim deed soon after the property was purchased in 1994, and that wife subsequently gifted the property to Dolores in 2004. We reject this contention.

Both spouses must join in executing any instrument by which community property is conveyed. (Fam. Code, § 1102, subd. (a); see also § 1100, subd. (b) ["A spouse may not make a gift of community personal property . . . without the written consent of the other spouse. . . ."].) With certain statutory exceptions, all property acquired during the marriage is community property. (§ 760.) In *In re Marriage of Rossin* (2009) 172 Cal.App.4th 725, 732, the court explained that characterization of property as community or separate property "depends on three factors: (1) the time of acquisition; (2) the 'operation of various presumptions, particularly those concerning the form of title'; and (3) the determination 'whether the spouses have transmuted' the property in question, thereby changing its character." "Transmutation" is an agreement between the spouses that works a change in the character of the property. To be valid, there must be a

writing by the spouse whose interest in the property is adversely affected expressly declaring that the change in character "is made, joined in, consented to, or accepted by" that spouse. (§ 852, subd. (a).)

The mere fact that one spouse quitclaims his or her interest in community property to the separate property of the other spouse does not conclusively establish a transmutation. This is because when an interspousal transaction advantages one spouse, the law presumes the transaction was induced by undue influence. (*In re Marriage of Haines* (1995) 33 Cal.App.4th 277, 293.) Where a transmutation is evidenced by a deed, it is the burden of the advantaged spouse to overcome the presumption. (*Id*. at p. 296.) In *Haines*, the court held, "To demonstrate the advantage was not gained in violation of the confidential relation between marital partners, [grantee's] burden properly should have been to prove the quitclaim deed 'was freely and voluntarily made, and with a full knowledge of all the facts, and with a complete understanding of the effect of the transfer.' [Citations.]" (*Ibid*.)

Here, it is undisputed that the Murrieta property was community property when it was acquired. The trial court expressly found that husband did not knowingly transmute the property to wife's separate property. Because wife elected to proceed without a reporter's transcript of the trial, she cannot challenge the sufficiency of the evidence to support this finding. Because the record does not support wife's contention that the property was her separate property, the conveyance to her mother fails as she could not unilaterally gift it. (Fam. Code, § 1102.) Accordingly, the property remained a community asset and the trial court had jurisdiction over division of the proceeds of the sale of the Murrieta property.

C. Award of New Zealand Property to Husband Was Not Error

Wife contends it was error to award the New Zealand property to husband. She argues that the presumption that it was community property was rebutted by other evidence. As we have already explained, in the absence of a reporter's transcript, wife cannot challenge the sufficiency of the evidence.

D. Wife Has Not Shown Error in the Child Support Order

Wife contends it was error to uphold "non-California guideline child support." She argues that the corporate income of Asset should not have been attributed to wife as her personal income in the calculation of child support. Wife's failure to cite any legal authority in support of her contention constitutes a forfeiture of the issue on appeal. (*Boyle v. CetainTeed Corp*. (2006) 137 Cal.App.4th 645, 649 [party asserting error must present argument and legal authority on each point raised]; see also *In re S.C.* (2006) 138 Cal.App.4th 396, 408 ["To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error."].)

Even if this contention was not forfeited, we would find no merit in it. This is because the trial court's findings in connection with a child support order are reviewed under the substantial evidence standard. (*In re Marriage of Zimmerman* (2010) 183 Cal.App.4th 900, 906-907.) Because wife has elected to proceed without a reporter's transcript, she cannot challenge the sufficiency of the evidence to support the trial court's finding of fact as to her income.

E. Wife Has Not Shown Error in the Denial of her Motion for New Trial

Wife contends the trial court erred in denying her motion for new trial. She argues that she was entitled to a new trial because (1) husband fraudulently failed to disclose a $19,230.77 distribution from his 401K plan; (2) "fraud in the evidence in Dana Point claim of community"; and (3) insufficiency of the evidence to treat the properties held by Asset as community property.

Essentially, wife's new trial motion challenged the sufficiency of the evidence to support the trial court's findings. As with wife's other arguments, her failure to include a reporter's transcript precludes her from challenging the sufficiency of the evidence.

F. The Motion to Modify Child Support Is Not Properly Before Us

Mother contends, "Motion to modify child support according to California Guidelines on March 9, 2012 was ignored." Wife's notice of appeal states that it is from the judgment entered on December 16, 2011. Wife's motion for modification of child support was filed on January 20, 2012, set for hearing on February 10, 2012, and denied on March 9, 2012, long after the December 16, 2011 judgment referred to in the notice of appeal.

DISPOSITION

The judgment is affirmed. Husband is awarded costs on appeal.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.